TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~320~~ 122

CORNELIUS BRAINARD, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

HENRY G. HUBBARD.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED DECEMBER 6, 1869.

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UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of errors of the State of Connecticut, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut, in the county of Middlesex, in the second judicial district of said State, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Cornelius Brainard, of the town of Haddam, in said county, and Henry G. Hubbard, of the town of Middletown, in said county, wherein was drawn in question the construction of certain statutes of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under said statutes, a manifest error hath happened, to the great damage of
2 the said Cornelius Brainard, as by his complaint appears; we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

3 Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-nine.

LORIN P. WALDO,
Clerk of the U. S. Circuit Court for the District of Connecticut.

Allowed by—

JOEL HINMAN,
Chief Judge of the Supreme Court of Errors of the State of Connecticut.

4 (Indorsed:) Cornelius Brainard vs. Henry G. Hubbard.

Writ of error filed in the office of the clerk of the supreme court of errors of the State of Connecticut for Middlesex County, in the second judicial district, this twenty-ninth day of September, A. D. 1869.

CHA'S G. R. VINAL,
Clerk of said Court.

5 THE UNITED STATES OF AMERICA, *ss:*

To Henry G. Hubbard, of the town of Middletown, county of Middlesex, and State of Connecticut, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, within and for Middlesex County, in the second judicial district of said

State, wherein Cornelius Brainard is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

6 Witness the Honorable Joel Hinman, chief judge of the supreme court of errors of the State of Connecticut, this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-nine.

JOEL HINMAN,
Chief Judge of the Supreme Court of Errors of the State of Connecticut.

On this thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared Peter R. Carll, U. S. marshall for the district of Connecticut, before me, the subscriber, and makes oath that he delivered a copy of the within citation to Henry G. Hubbard, of the town of Middletown, county of Middlesex, and State of Connecticut, (the person therein named,) on the twenty-ninth day of September, A. D. 1869.

SAMUEL L. BRONSON,
U. S. Commissioner.

7 (Indorsed:) Cornelius Brainard vs. Henry G. Hubbard.

Citation in the above-entitled writ of error referred to and filed in the office of the supreme court of errors of the State of Connecticut for Middlesex County, in the second judicial district, this first day of October, A. D. 1869.

CHA'S G. R. VINAL,
Clerk of said Court.

8 Know all men by these presents that we, Cornelius Brainard, of the town of Haddam, in Middlesex County, and Hiram Willey, of the town and county of New London, are held and firmly bound unto Henry G. Hubbard, of the town of Middletown, county of Middlesex, and State of Connecticut, in the full and just sum of four thousand dollars, to be paid to the said Henry G. Hubbard, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a term of the supreme court of errors of the
9 State of Connecticut, held at New Haven, within and for the second judicial district of said State, on the fourth Tuesday of September, 1869, in a suit depending in said court between Cornelius Brainard aforesaid and Henry G. Hubbard aforesaid, judgment was rendered against the said Cornelius Brainard, and the said Cornelius Brainard having obtained his writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment so rendered in the aforesaid suit, and a citation directed to the said Henry G. Hubbard citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Cornelius Brainard shall prosecute his said writ of error to effect, and

answer all damages and costs if he shall fail to make his plea
10 good, then the above obligation to be void; else to remain in full force and virtue.

CORNELIUS BRAINARD. [SEAL.]
HIRAM WILLEY. [SEAL.]

Sealed and delivered in presence of—
HENRY B. HARRISON.

Approved by—

JOEL HINMAN,
Chief Judge of the Supreme Court of Errors of the State of Connecticut.

11 (Indorsed:) Cornelius Brainard vs. Henry G. Hubbard. Copy of bond on above-entitled writ of error.

Filed in the office of the clerk of the supreme court of errors of the State of Connecticut for Middlesex County this 29th day of September, A. D. 1869.

CHA'S G. R. VINAL,
Clerk of said Court.

12 CORNELIUS BRAINARD, PLAINTIFF IN error,
vs.
HENRY G. HUBBARD, DEFENDANT IN ERROR.

To the sheriff of the county of Middlesex, or his deputy, or either of the constables of the town of Middletown, in said county, greeting:

By authority of the State of Connecticut you are hereby commanded to summon Henry G. Hubbard, of said town of Middletown, in said county of Middlesex, to appear before the supreme court of errors at the term of said court next to be holden within and for the second judicial district, on the fourth Tuesday of September, A. D. 1869, at New Haven, (or if any other place shall be duly designated and fixed according to the statute in such case provided as the place where said term shall be held, then at such other place to be designated,) in said district, then and there to hear read the process, record, and judgment of the superior court of the State of Connecticut, holden at Haddam, in said county of Middlesex, on the second Tuesday of April, A. D. 1869, in an action wherein the said Henry G. Hubbard was plaintiff and Cornelius Brainard, of the town of Haddam, in said Middlesex
13 County, was defendant, and the errors therein assigned, and to do and suffer what by the said supreme court of errors shall be enjoined. Whereupon the plaintiff in error declares and says that the said Henry G. Hubbard brought to the superior court of the State of Connecticut, holden at the town of Haddam, within and for the county of Middlesex aforesaid, on the first Tuesday of September, A. D. 1867, his action in the following manner:

To the sheriff of the county of Middlesex, or his deputy, or to either of the constables of the town of Haddam and Middletown, within said Middlesex County, greeting:

By authority of the State of Connecticut you are hereby commanded to summon Cornelius Brainard, of the said town of Haddam, in said Middlesex County and State aforesaid, to appear before the superior

court of the State of Connecticut next to be holden at the said town of Haddam, within and for the county of Middlesex, in said State, on the first Tuesday of September, A. D. 1867, then and there to answer unto Henry G. Hubbard, of the said town of Middletown, in said Middlesex County, and State aforesaid, one of the stockholders of the "Russell Manufacturing Company," a corporation duly created by the general assembly of said State of Connecticut, and located and doing business in said town of Middletown; also one of the stockholders of the "Falls Manufacturing Company," a corporation duly and legally created under and by the laws of said State of Connecticut, and located and doing business in said town of Middletown; in a plea of the case. Whereupon the said plaintiff declares and says that heretofore, to wit, during the whole of the year 1864, and the whole of the year 1865, the said plaintiff was, and ever since has been, and now is, a stockholder of said "Russell Manufacturing Company," and a stockholder of the said "Falls Manufacturing Company;" and that the business of the said Russell Manufacturing Company, among other things, was and is the manufacturing and making of cotton and worsted webs and elastic suspenders for the market and sale, and the business of the said Falls Manufacturing Company, among other things, was and is that of the manufacturing of cotton yarns and threads for market and sale; that heretofore, to wit, on the day of , A. D. 1865, the
15 said defendant was a deputy collector of the internal revenue of the United States for the second collection district of said State of Connecticut, and that as such deputy collector he, the said defendant, did, at said town of Middletown, within said second collection district, upon the said day of , A. D. 1865, collect and receive from the said plaintiff, as such stockholder of said Russell Manufacturing Company and said Falls Manufacturing Company, a large amount of money, to wit, the amount of three thousand dollars, as for duties claimed by said defendant to be due and owing and payable from the said plaintiff as a stockholder of said "Russell Manufacturing Company" and the said "Falls Manufacturing Company" as aforesaid, upon his, the said plaintiff's, personal shares of interest on the surplus and undivided earnings and incomes in the hands and under the control of the directors of said Russell Manufacturing Company and the said Falls Manufacturing Company, in the year 1864, of which said surplus and undivided earnings and income the said plaintiff was in no way or manner entitled to receive his personal share of the same, or any portion
16 thereof, until after the same had been divided and a dividend declared; which amount of duties on said earnings and incomes said defendant claimed to have accrued under and by virtue of a certain law of the United States, approved June 30, 1864, entitled "An act to provide internal revenue to support the government, to pay interest on the public debts, and for other purposes." And the said defendant then and there threatened the said plaintiff that unless payment of the same was then and there made by the said plaintiff to the said defendant, he, the said defendant, would coerce payment of the same by legal proceedings, and thereby subject the said plaintiff to heavy additional cost and expenses. And the said plaintiff, to avoid such legal coercion, costs, and expenses, and under duress by reason thereof, and of the threats of the said defendant, then and there paid the same to the said defendant as such deputy collector, under due and legal protest made by him, the said plaintiff, at the time that said payment was illegally collected, and the said plaintiff says that the sums aforesaid were not, in fact, due or collectable by said defendant from the said plaintiff as afore-

said under and by virtue of said law, or by virtue of any other law of the United States; but, in fact, the said defendant, as deputy collector as aforesaid, did coerce payment and make collection of said sums of money of the said plaintiff in the manner aforesaid. Whereby the said defendant then and there became and was indebted to the said plaintiff in the said sum of three thousand dollars for the said sums of money so before that time had and received by the said defendant from the said plaintiff as aforesaid, which said sums of money were then and there so had and received by the said defendant of the said plaintiff as aforesaid to and for the use of the said plaintiff; and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Middletown aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay to him the said sums of money when he, the said defendant, should be thereunto requested. Also in a plea of the case whereupon the said plaintiff declares and says that the said defendant heretofore, to wit, on the day of , A. D. 1867, at said Middletown, was indebted to the said plaintiff in the further sum of six thousand dollars for so much money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money when he, the said defendant, should be thereunto afterwards requested; but the said plaintiff says that the said defendant, his promise and undertaking aforesaid not regarding, hath not paid said sum of six thousand dollars, or any part thereof, to the said plaintiff, but has ever since neglected and refused so to do though often requested, to the damage of said plaintiff said sum of six thousand dollars; to recover which, with costs, this suit is brought.

Hereof fail not, but of this writ with your doings thereon, make legal service and return.

Dated at Middletown, in Middlesex County, this 9th day of August, A. D. 1867.

Signed and certified by—

CHA'S C. TYLER,
Justice of the Peace.

MIDDLETOWN AND HADDAM,
Aug. 20th, 1867.

MIDDLESEX COUNTY, *ss:*

I then left a true and attested copy of this writ with the said defendant Cornelius Brainard.

Attest:

ARBA HYDE,
Deputy Sheriff.

Fees.

Travel, 15 miles	$1 50
Copy	1 50
Service	12
Indorsements	24
	$3 36

Superior court Middlesex County.

HENRY G. HUBBARD
vs.
CORNELIUS BRAINARD.

The defendant denies the truth of the matters contained in the plaintiff's declaration, and for trial thereof puts himself on the court for trial.

By HIRAM WILLEY,
His Attorney.

The plaintiff will please to take notice that on the trial of the above-entitled cause the defendant will claim and give in evidence that, on the day of July, 1865, and for a long time previous thereto, he had been and was a deputy collector of the internal revenue of the United States for the second collection district of Connecticut; that as such collector he had in his hands an assessment and tax for the sum of $1,597 against the plaintiff as a part of the income tax of the
20 plaintiff, the same being the amount of tax due the government of the United States on that part of the amount of surplus undivided gains and profits of the Russell Manufacturing Company and the Falls Manufacturing Company, to wit, the sum of $15,970, to which the plaintiff, as a stockholder in said companies, was entitled, and which was part of the plaintiff's income over and beyond the sum of $10,000; and the defendant, as such collector, collected of the same, and has paid it over into the treasury of the United States. And the defendant further gives notice that he will insist upon, claim, and show to the court that the plaintiff is prohibited and barred from having and maintaining his said action by the provisions and limitations of the act of Congress, passed July 13, 1866, entitled "An act to reduce internal taxation and to amend an act entitled 'An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' approved June 30th, eighteen hundred and sixty-four, and acts amendatory thereof," and especially by the provisions and limitations of the 19th section of said act, which is in the words following:

"SEC. 19. *And be it further enacted*, That no suit shall be
21 maintained in any court for the recovery of any tax alleged to have been erroneously or illegally assessed or collected, until appeal shall have been duly made to the Commissioner of Internal Revenue according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of said Commissioner shall be had thereon unless such suit shall be brought within six months from the time of said decision, or within six months from the time this act takes effect; provided, if said decision shall be delayed more than six months from the date of such appeal, then said suit may be brought at any time within twelve months from the date of such appeal."

That said act, by the provisions thereof, were to take effect, when not otherwise provided, on the 1st day of August, 1866, and the provisions contained in said 19th section took effect on said 1st day of August, 1866; and that this action was brought on the 9th day of August, A. D. 1867.

Middlesex superior court, December term, A. D. 1868.

HUBBARD *vs.* BRAINARD. } Action of assumpsit.—Finding of facts by the court.

22 This action being tried by the court, by consent of parties, now, at their request, the court doth make the following finding of facts, and doth cause the same to become a part of the record in the above-entitled action:

1. The defendant at the time of the payment hereinafter described, as made to him by the plaintiff, was legally appointed and acting as collector of the internal revenue of the United States, in and for the district in which the plaintiff then resided.

2. At the time of the assessment hereinafter named, the plaintiff owned a majority of the stock in two certain manufacturing corporations, and in each of which he was a director, the whole number of directors in each being three or more.

During the then preceding year of 1864 profits had been made by each of said companies to a greater amount than the dividends made by each; that said profits had not been divided nor in any way set apart from the general assets of the corporations, nor appropriated for the use of the stockholders, otherwise than the law will imply, from the fact of the existence of such profits.

23 3. That if such profits were in law liable to assessment, an assessment was legally made; that the assessor gave due notice to the plaintiff when and where appeals from said assessment would be heard, and the plaintiff did not appeal therefrom either to the assessor or to the Commissioner of Internal Revenue.

4. That the assessor duly returned his assessment list to the collector, who thereupon demanded of the plaintiff the amount of the tax assessed therein against him, and threatened, upon his refusal, to coerce collection of the whole amount.

5. That the plaintiff thereupon, to wit, on the 19th day of August, A. D. 1865, paid the whole amount of said assessment to the collector, stating to him that $1,597 of the same was illegally assessed for the reasons herein set forth, and protesting in due form of law against the collection of the same.

6. That before this suit was brought the collector paid over to the treasury of the United States the amount so by him collected of the plaintiff.

7. That the profits made by said corporation during said year were to such an amount that if the interest of the plaintiff therein was
24 legally subject to said assessment, the amount of $1,597 was the proper amount of such assessment.

8. That from time to time during said year, and without any intention to defraud the government, unless the investment hereinafter named constituted such fraud by implication of law, said corporations invested said profits in part in real estate, machinery, and raw material, proper for carrying on their business, and in part for the payment of debts incurred in previous years, and the same remained so invested at the time of such assessment and collection.

9. In this action the plaintiff claims to recover the said sum of $1,597, with interest from said day of payment.

10. That the plaintiff, on the day of its date, delivered under oath to Bartlett Bent, assistant assessor, his list, omitting the amount now in

controversy, which the asssessor required him to add, but he declined; and the same was then added to his said list by the assessor. Said list as finally completed stood as follows:

Income at 5 per cent.	$4,400
" " 10 " "	51,970
Tax	$5,417
Less withheld	289
Balance	$5,128

25 11. The allegations in the notice annexed to the defendant's plea, setting forth the provisions contained in the 19th section of the act of Congress, approved July 13, 1866, entitled "An act to reduce internal taxation and to amend an act entitled 'An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' approved June 30th, 1864, and acts amendatory thereof," are true, and said act, and the provisions contained in the 19th section thereof, took effect on the first day of August, 1866, and have ever since been in force. The aforesaid act, and the act of Congress approved June 30th, 1864, entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," are hereby referred to and made part and parcel of this finding. The present action was commenced on the 20th day of August, A. D. 1867, but the court finds that the plaintiff previously, to wit, on the day of , A. D. 186 , brought an action against the defendant, for the same cause, to the circuit court of the United States, holden at , in and for the district of Connecticut, on the , which said action was on the
26 day of , A. D. 186 , dismissed by said court for want of jurisdiction. The court reserves the questions of law arising upon the foregoing facts, and the question what judgment ought to be rendered in the case, for the opinion and advice of the supreme court of errors, next to be holden in and for the second judicial district in this State.

By LOOMIS, *Judge*.

At a superior court held at Middletown, within and for the county of Middlesex, on the first Tuesday of December, A. D. 1868:

Present, Hon. Dwight Loomis, judge; Cha's G. R. Vinal, clerk; John I. Hutchinson, sheriff.

HENRY G. HUBBARD, PLAINTIFF,
vs.
CORNELIUS BRAINARD, DEFENDANT.

In an action or plea of the case, demanding the sum of six thousand dollars damages, as by writ on file, dated the 9th day of August, A. D. 1867.

This action came to the term of this court, held at Haddam, within and for the county of Middlesex, on the first Tuesday of September, A. D. 1867, when and where the parties appeared, and came thence by legal continuances to the present term of this court, when and where the parties again appeared and were at issue, as on file,
27 when this court made a special finding, as on file, and reserves

the case for the advice of the supreme court of errors, next to be held at New Haven, in and for the second judicial district of the State of Connecticut, on the second Tuesday of February, A. D. 1869.

Attest: CHA'S G. R. VINAL, *Clerk.*

At a supreme court of errors held at New Haven, within and for the second judicial district of the State of Connecticut, on the second Tuesday of February, A. D. 1869:

Present, Hon. Joel Hinman, chief justice; Hon. Thomas B. Butler, Hon. John D. Park, Hon. Elisha Carpenter, associate judges; Cha's G. R. Vinal, clerk; John I. Hutchinson, sheriff.

HENRY G. HUBBARD, PLAINTIFF,
vs.
CORNELIUS BRAINARD, DEFENDANT.

This court upon due hearing advise the superior court to render judgment for the plaintiff.

Attest: CHA'S G. R. VINAL, *Clerk.*

Superior court, Middlesex County, April term, A. D. 1869.

HENRY G. HUBBARD
vs.
CORNELIUS BRAINARD.

Henry G. Hubbard, of the town of Middletown, county of
28 Middlesex, plaintiff, vs. Cornelius Brainard, of the town of Haddam, in said county, defendant, in an action or plea of the case set forth at large in the plaintiff's writ and declaration, demanding the sum of six thousand dollars damages and his costs of suit, as per writ on file, dated the 9th day of August, A. D. 1867.

This action came to the term of this court, held at Haddam, within and for the county of Middlesex, on the first Tuesday of September, A. D. 1867, when and where the parties appeared, and came thence by legal continuances to the term of this court, held at Middletown, within and for the county of Middlesex, on the first Tuesday of December, A. D. 1868, when and where the parties again appeared and were at issue, as on file, when this court made a special finding, as on file, and reserves the case for the advice of the supreme court of errors next to be held at New Haven, in and for the second judicial district of the State of Connecticut, on the second Tuesday of February, A. D. 1869. And whereas the said supreme court of errors did advise this court to render judgment for the plaintiff, it is therefore considered, ordered, and adjudged by this court that the plaintiff do recover of the defendant
29 the sum of 1,952.06 dollars and his costs of suit, taxed and allowed to be the sum of 59.16 dollars, and that execution issue therefor.

Attest: CHA'S G. R. VINAL, *Clerk.*

As by the files and records of said superior court, ready in court to be produced, fully appears:

And now the plaintiff in error complains and says, that the superior court aforesaid, in proceeding to and rendering said final judgment

manifestly erred, and mistook the law in each of the particulars following, to wit:

1st. That upon the facts admitted in said cause, and found by said superior court to be true, the said superior court ought to have rendered judgment for the defendant named in said cause, (the present plaintiff in error,) and not for the plaintiff in said cause named, (the present defendant in error.)

2nd. That said superior court erroneously decided in favor of the plaintiff in said cause named (the present defendant in error) all the questions of law arising upon the facts found by said superior court, and arising upon the record of the said court as aforesaid; whereas said superior court ought to have decided in favor of the defend-
30 ant named in said cause (the present plaintiff in error) all the said questions of law.

3rd. That said superior court erroneously decided and held that the undivided "profits" specified in said finding of facts were not, under the laws of the United States, at the time when the "assessment" specified in said finding was made, liable to such assessment; whereas said superior court ought to have decided and held, on the contrary, that said undivided profits were, under said laws of the United States, then liable to such assessment.

4th. That said superior court erroneously decided and held that the "interest of the plaintiff" (namely, the present defendant in error) in the said undivided "profits," specified in said finding of facts, was not, when said assessment was made, legally subject to said assessment under the laws of the United States; whereas said superior court ought to have decided and held, on the contrary, that said "interest of the plaintiff" (namely, the present defendant in error) in said undivided "profits" was, when said assessment was made, legally subject to said assessment under the laws of the United States.

5th. That said superior court erroneously decided and held that, upon the facts found by said court, the defendant in said cause (the
31 present plaintiff in error) was not entitled to a judgment in said cause in his favor by virtue and force of the act of Congress entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," approved June 30th, 1864, as amended by the act of Congress approved March 3rd, 1865, entitled "An act to amend an act entitled 'An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' approved June thirtieth, eighteen hundred and sixty-four;" whereas said superior court ought to have held and decided that upon said facts so found in said cause the defendant therein (the present plaintiff in error) was entitled to a judgment in his favor in said cause by virtue and force of said acts of Congress.

6th. That said superior court erroneously decided and held that, upon the facts so found by said court, the plaintiff in said cause (the present defendant in error) was not barred of a recovery in said cause against the defendant therein (the present plaintiff in error) by force and virtue of the act of Congress set up in the notice of the defendant in said cause, (the present plaintiff in error,) as appears of record
32 in said notice, said act of Congress being entitled "An act to reduce internal taxation, and to amend an act entitled 'An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes,' approved June 30th, eighteen hundred and sixty-four, and acts amendatory thereof," which said act, so set up in said notice, was approved July 13th, 1866; whereas said court,

upon the facts so found, ought to have held and decided that the plaintiff in said cause (the present defendant in error) was barred of a recovery in said cause against the defendants in said cause (the present plaintiff in error) by force and virtue of said act of Congress so set up in said notice, and especially by force and virtue of the 19th section of said act.

7th. That said superior court erroneously held and decided in said cause that, upon the facts so found by said court, the defendant therein (the present plaintiff in error) was not, by virtue and force of any laws of the United States applicable to the facts so found, entitled to recover judgment in said cause against the plaintiff in said cause, (the present defendant in error;) whereas said court ought, on the con-
33 trary, to have held and decided in said cause that upon the facts so found the defendant in said cause was entitled to judgment therein against the plaintiff in said cause (the present defendant in error) by virtue and force of the laws of the United States applicable to said facts so found.

8th. That the said superior court upon the facts so found erroneously rendered judgment in said cause in favor of the plaintiff therein, (the present defendant in error;) whereas said court ought not, upon said facts, to have rendered judgment in said cause in favor of the plaintiff therein, (the present defendant in error.)

9th. That upon the whole record (including the declaration, plea and notice, and finding of facts) in said cause, the said superior court erroneously rendered judgment for the plaintiff in said cause, (the present defendant in error,) and not for the defendant in said cause, (the present plaintiff in error;) whereas said court ought not, upon said record (including said declaration, plea and notice, and finding of facts) in said cause, to have rendered judgment for the plaintiff in said cause, (the present defendant in error,) but ought to have rendered judgment
34 in said cause for the defendant therein, the present plaintiff in error. Whereupon and for other errors apparent upon said record, this plaintiff prays that said erroneous judgment may be rendered and set aside, and he be restored to all he has lost thereby, which he says is dollars; and to recover said damages and reverse said judgment, the plaintiff in error brings this suit. This writ of error is allowed by the undersigned authority, good sufficient bond, with surety, &c., being taken by said authority, pursuant to the statute in such case provided, and Henry B. Harrison as principal, and Wilbur G. Howard as surety, are recognized to the defendant in error in the sum of one hundred and forty dollars, that the plaintiff in error shall prosecute his suit to effect and answer all damages if he fail to make his plea good.

Hereof fail not, but of this writ, and your doings thereon, make lawful service and return.

Dated at New Haven this 11th day of May, 1869.

EDWARD I. SANFORD,
A Judge of the Superior Court.

35 MIDDLESEX COUNTY, *ss:*

MIDDLETOWN, *May 12th*, 1869.

Then and there I left a true and attested copy of this writ of error, copy of record, finding, &c., at the usual place of abode of the within-named defendant, Henry G. Hubbard, in said town of Middletown.

Attest: GIDEON O. HOTCHKISS,
Sheriff of New Haven County and Deputy Sheriff of Middlesex County.

Fees.

Travel	$8 00
Copy	7 00
Service	12
Indorsements	18
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A true copy of record.
Attest: CHA'S G. R. VINAL, *Clerk.*

Supreme court of errors, Middlesex County, second judicial district, September term, 1869.

CORNELIUS BRAINARD *vs.* HENRY G. HUBBARD. } Plea.

Now the defendant in error in the above-entitled cause defends, pleads, and says that there is no error in the record complained of in the above-entitled writ of error; and this he is ready to verify. Wherefore he prays judgment, &c.

36 HENRY G. HUBBARD,
Def't in Error.
By his att'y, C. C. TYLER.

Supreme court of errors, Middlesex County, second judicial district, September term, 1869.

CORNELIUS BRAINARD *vs.* HENRY G. HUBBARD. } Writ of error.

Now, at this term of said supreme court of errors, the parties to the above-entitled writ of error appeared and answered thereto; and thereupon the defendant pleaded nothing erroneous, &c., &c., as on file; and thereupon the court found the issue for the defendant in error. Whereupon it is considered by said court that there is no error in the record complained of in the above-entitled writ of error, and that the defendant in error recover of the plaintiff in error his costs, taxed and allowed at dollars, and that execution issue therefor.
Attest: CHA'S G. R. VINAL, *Clerk.*

Supreme court of errors, clerk's office, second judicial district.

STATE OF CONNECTICUT, *Middlesex County, ss:*

I, Charles G. R. Vinal, clerk of the supreme court of errors of the State of Connecticut, for the county of Middlesex, in the second
37 judicial district, hereby certify that the above and foregoing is a true copy of the files, pleadings, and record of judgment in the above-entitled cause.

In testimony whereof I have hereunto set my hand and the seal of said supreme court of errors on this 29th day of October, A. D. 1869.
[SEAL.] CHA'S G. R. VINAL, *Clerk.*
[5-cent internal revenue stamp affixed and canceled.]

(Indorsement on cover:) No. 320. Cornelius Brainard, collector of internal revenue, plaintiff in error, vs. Henry G. Hubbard; Connecticut sup. court of errors.

Filed 6th December, 1869.

In the Supreme Court of the United States.

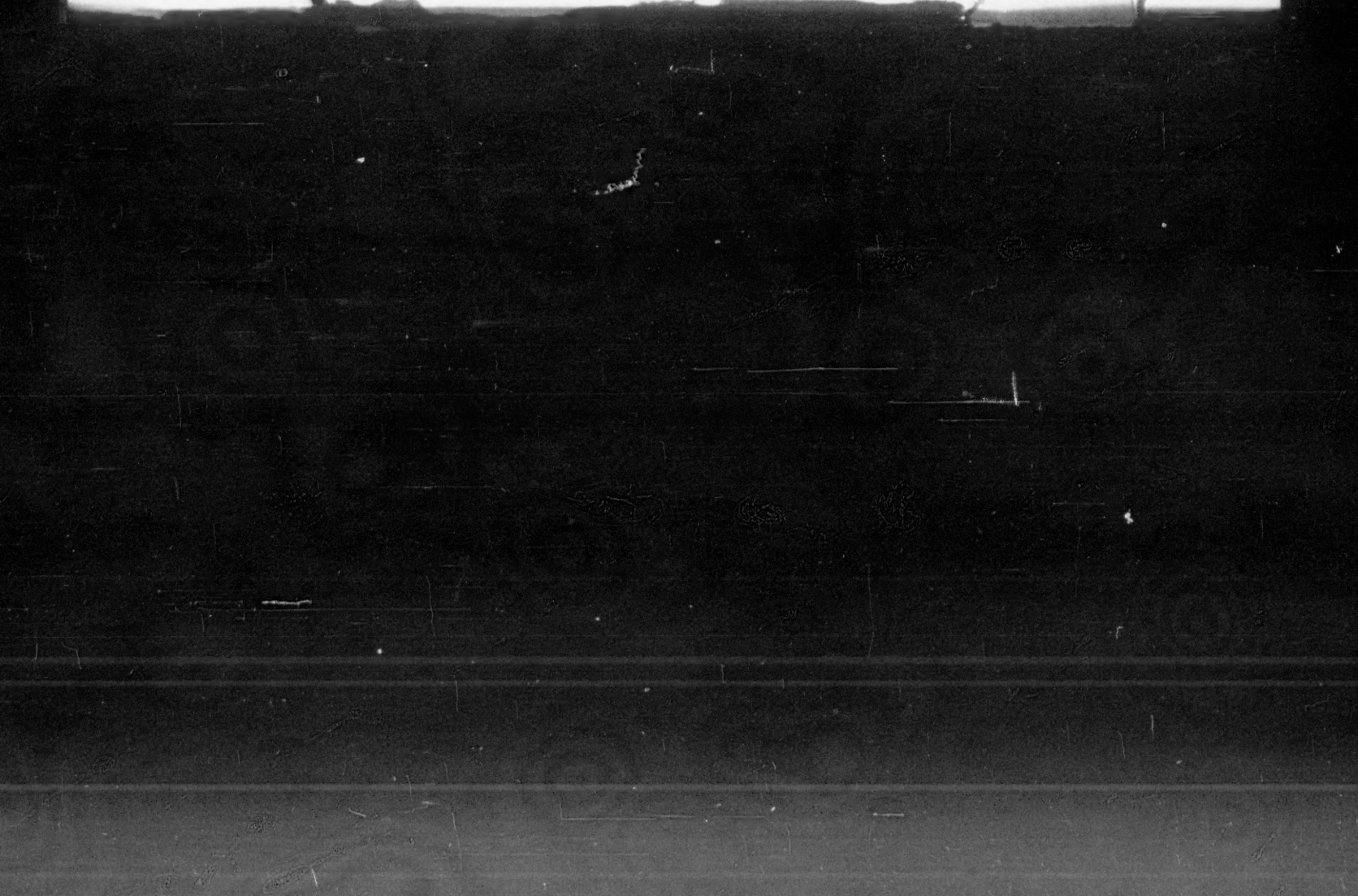
DECEMBER TERM, 1870.

CORNELIUS BRAINARD, *Collector of Internal Revenue, Plaintiff in Error,*
vs.
HENRY G. HUBBARD.

No. 122.

In Error to the Supreme Court of Errors of the State of Connecticut.

BRIEF FOR THE UNITED STATES.



In the Supreme Court of the United States.

DECEMBER TERM, 1870.

CORNELIUS BRAINARD, *Collector of Internal Revenue, Plaintiff in Error,*
vs.
HENRY G. HUBBARD.

No. 122.

In Error to the Supreme Court of Errors of the State of Connecticut.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was a suit brought by the defendant in error, on the 9th of August, 1867, in the superior court for Middlesex county, Connecticut, to recover from the plaintiff in error money alleged to have been illegally exacted and collected as income tax by the latter, while deputy collector of internal revenue. The issue was tried by the court with the consent of parties, and judgment was given for the plaintiff below.

The facts, as found by the court, and on which the judgment was rendered, were made a part of the record, and appear on pages 7 and 8 of the printed transcript. The defendant below afterwards carried the

case, by writ of error, before the supreme court of errors of the State, where, at the September term, 1869, thereof, the judgment of the superior court for the county aforesaid was sustained.

The case is now before this court on a writ of error to the said supreme court of errors, which was issued on the 29th of September, 1869, and the citation therein duly served the same day.

Two questions are raised by the record:

1. Whether the maintenance of the suit by the defendant in error was prohibited by the 19th section of the act of July 13, 1866, (14 Stats., 152.)

2. Whether, under the provisions of section 117 of the act of June 30, 1864, (13 Stats., 281,) the *undivided* annual profits of a manufacturing corporation should be estimated and assessed as income of the stockholders of such corporation.

Section 19 of the act of 1866 declares—

"That no suit shall be maintained in any court for the recovery of any tax alleged to have been erroneously or illegally assessed or collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of said Commissioner shall be had thereon, unless such suit shall be brought within six months from the time of said decision, or within six months from the time this act takes effect: *Provided*, That if said decision shall be delayed more than six months from the date of such appeal, then said suit may be brought at any time within twelve months from the date of such appeal."

The particular provision of section 117 of the act of 1864, applicable to this case, is the following:

"In estimating the annual gains, profits, or income of any person, the interest over and above the amount of interest paid upon all notes, bonds, and mortgages, or other forms of indebtedness, bearing interest, whether due and paid or not, if good and collectible, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and the increased value of live stock, whether sold or on hand, and the amount of sugar, wool, butter, cheese, pork, beef, mutton or other meats, hay and grain, or other vegetable or other productions of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the 31st of December, shall be included and assessed as part of the income of such person for each year, *and the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise.*"

The companies specified, and not embraced in this provision, are "any bank, trust company, savings institution, insurance, railroad, canal, turnpike, canal navigation, or slack-water company."

ARGUMENT.

I.

The prosecution of the suit by the defendant in error was barred by the 19th section of the act of July 13, 1866, quoted above. This provision went into effect

on the 1st of August, 1866, (see section 70 of same act, 14 Stats., 173,) and took away the right to maintain an action in any court, unless it was brought within six months from that time; or within six months from the time of the decision of the Commissioner of Internal Revenue, on appeal to him; or within twelve months from the date of such appeal, in case the decision of the Commissioner should be delayed more than six months from the time of the appeal. The action, in this case, was not commenced until August 9, 1867, and no appeal had been previously taken by the plaintiff to the Commissioner. (See Record, p. 7.) Clearly, then, the former had not brought himself within the terms of the statute so as to enable him to prosecute his suit for recovery of the tax alleged to have been illegally assessed and collected.

It seems that before the commencement of this action, suit had been brought by the defendant in error for the same cause in the circuit court of the United States for the district of Connecticut, which was dismissed for want of jurisdiction. (Record, p. 8.) The record does not show the precise date when that suit was commenced, or when dismissed; but, from the statement of the court below in an opinion upon this case, (see 35 Conn. Rep., 575,) it appears to have been pending in the circuit court when section 19 of the act of July 13, 1866, took effect, and to have been dismissed at the June term, 1867, of that court, under the provisions of the section just mentioned. However, the fact that another suit

was instituted, either before or after that section went into operation, is entirely immaterial here; it does not save *this* suit; for the language of the provision is, that "no suit shall be maintained," &c., "unless *such* suit shall be brought," &c.

In adverting to the provision thus made by Congress to correct errors in the administration of the internal revenue laws, this court, in Nichols *vs.* United States, (7 Wall., 130, 131,) remarks as follows: "The party aggrieved can test the question of the illegality of an assessment or collection of taxes by suit; but he cannot do this until he has taken an appeal to the Commissioner of Internal Revenue. If the Commissioner delays his decision beyond the period of six months from the time the appeal is taken, then suit may be brought at any time within twelve months from the date of the appeal. Thus it will be seen that the person who believes he has suffered wrong at the hands of the assessor or collector can appeal to the courts; but he cannot do this until he has taken an intermediate appeal to the Commissioner, and at all events he is barred from bringing a suit, unless he does it within a year from the time the Commissioner is notified of his appeal. The object of these different provisions is apparent. While the Government is desirous to secure the citizen a mode of redress against erroneous assessments or collections, it says to him, we want all controverted questions concerning the revenue settled speedily, and if you have complaint to make you must let the Commis-

sioner of Internal Revenue know the grounds of it; but if he decides against you, or fails to decide at all, you can test the question in the courts, if you bring your suit within a limited period of time." And in the opinion recently pronounced by this court in the case of Braun *vs.* Sauerwein, No. 214, December term, 1869, it was observed in reference to the same provision: "The act, speaking from August 1, 1866, *prohibited a suit* until he [the claimant] should appeal to the Commissioner of Internal Revenue, and until his appeal should be decided, unless the decision should be postponed longer than six months, in which case he was at liberty to sue within a year from the time when his appeal was taken."

The court below, in the opinion already referred to, as it would seem, decided against the bar of the statute upon the following grounds:

1st. That the act was prospective and not retrospective, and that Congress did not intend that it should retroact to affect an existing vested right.

2d. That the law should not be construed to operate any further than to exclude the plaintiff from maintaining a suit upon the claim in the courts of the United States.

3d. That if the money taken was the money of the plaintiff in the hands of the defendant, which by the principles of the common law he had a *vested right* to recover, it was not competent for Congress, by subsequent legislation, to exclude the plaintiff from his right to apply to the superior court of that State for its

recovery, or limit the time within which he should bring such action. 35 Conn. Rep., 576.

With regard to the first and last of these grounds, it would appear that, conceding the illegality of the assessment, the plaintiff never had a right to recover the same back by suit in any court, derived simply from "the principles of the common law," and founded upon what is termed an implied promise. The money claimed was not paid to the collector until the 19th of August, 1865; and by the 3d section of the act of March 3, 1865, (13 Stats., 483,) collectors were required, from and after the 30th of June of that year, to pay daily into the Treasury the gross amount of all duties, taxes, and revenue received or collected in virtue of the internal revenue acts, without any abatement or deduction on account of compensation, &c., or claims of any description whatever. Now, according to Cary *vs.* Curtis, 3 How., 236, and Curtis *vs.* Fielder, 2 Black., 461, the effect of that provision was to bar any action to recover back duties paid subsequent to its passage, which rested merely upon the assumption of an implied obligation on the part of the defendant; because, as was observed by the court in the case last cited, "the law never implies a promise to pay unless some duty creates such an obligation, and, more especially, it never implies a promise to do an act contrary to duty or contrary to law." So that, the defendant having performed his duty under the act referred to and paid the money into the Treasury, the law would not imply a promise on his

part to pay it back to the plaintiff, because he was under no obligation to pay the money twice, and to have paid the same back to the plaintiff in the first place would have been contrary to his official duty as prescribed by Congress. Such remedy as the plaintiff possessed, then, depended entirely upon statute, and remedy by suit existed only by necessary implication from the provisions of the internal revenue laws. (See Philadelphia *vs.* Collector, 5 Wall., 731.) The authority to sue, conferred by those provisions, Congress could at any time modify as might be deemed expedient, or impose conditions and limitations upon its exercise, or take it away altogether.

As to the other ground mentioned, it is sufficient to say that the statute, which is the supreme law of the land, extends to "any court," and necessarily includes by its terms all courts, State and national. In Cary *vs.* Curtis, 3 How., 254, Judge Story, referring to section 2 of the act of March 3, 1839, then under consideration, remarked: "If it is a good bar in one court, it is good in all courts, under the provisions of that act. If Congress have a right to say, and have said, under the provisions of that act, that no officer of customs shall be liable to any action for money extorted by him under color of his office, without authority and against law, then these provisions are equally applicable to all courts, and furnish the rule of decision for all."

II.

As to the second question. It seems to have been the general design of Congress to tax the *undivided* gains and profits made by all corporations, as well as those which are divided among the stockholders. This plainly appears by considering section 117 of the act of 1864 in connection with sections 120 and 122 of the same act. The corporations mentioned in section 120 are banks, trust companies, and insurance companies, and the tax is thereby made to cover not only "dividends," but also "all undistributed sums, or sums made or added during the year to their surplus or contingent funds." Those mentioned in section 122 are railroad, canal, turnpike, canal-navigation, and slack-water companies; and the tax is thereby made to cover, not only gains and profits divided, but, in addition, "all profits of such company carried to the account of any fund, or used for construction." All other corporations not specified in those sections are covered by section 117, which expressly declares that the gains and profits thereof shall be included in estimating the annual gains, profits, or income of any person entitled to the same, *whether divided or otherwise.*

The purpose is the same in each of these sections, the only difference being in the mode of effectuating it. Where the gains and profits are those made by a corporation specified in either section 120 or section 122, the tax thereon is collected directly from the corporation, whether such gains and profits are divided or not.

Where they are the gains and profits made by any corporation included in section 117, the tax thereon is collected directly from the stockholders, or persons entitled thereto, whether the same are divided or otherwise. In all cases, the entire annual gains and profits of every corporation, divided or undivided, seem to be within the aim and purview of the statute, as objects of taxation.

To leave no doubt as to the object of the law, Congress has, in subsequent acts, adopted phraseology differing in some respects from that employed in the act under consideration, but without essentially differing from its general scope and meaning.

In the act of 1864, (13 Stats., 282,) the language is: "and the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise."

In the act of 1865 (13 Stats., 480:) "and *his share* of the gains and profits of all companies, whether incorporated or partnership, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise."

In the act of 1867 (14 Stats., 478:) "and the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same if divided, whether divided or otherwise."

In the act of 1870, section [illegible], (16 Stat., 258:) "the

share of any person of the gains and profits, whether divided or not, of all companies or partnerships," &c.

The last three provisions may be taken to express, in more precise and distinct terms, what was intended to be understood by and is virtually included in the first provision.

A. T. AKERMAN,
Attorney General.

B. H. BRISTOW,
Solicitor General.

Supreme Court of the United States.

CORNELIUS BRAINARD, Plaintiff in Error,

vs.

HENRY G. HUBBARD, Defendant in Error.

DECEMBER TERM, 1870,—NO. 122.

BRIEF OF CHARLES E. PERKINS,
OF COUNSEL FOR DEFENDANTS IN ERROR.

Supreme Court of the United States.

CORNELIUS BRAINARD, Plaintiff in Error.

vs.

HENRY G. HUBBARD, Defendant in Error.

December Term, 1870.

No. 122.

Brief of Charles E. Perkins of counsel for the defendant in error.

During the year 1864 two joint stock corporations located in the State of Connecticut, made a certain amount of money beyond their expenses.

With part of these earnings they from time to time during the year, paid debts incurred in previous years, with part they bought raw material, machinery, and real estate necessary for the proper management of their business, and the amount remaining at the close of the year they divided among their stock holders, of whom the defendant in error was one. This was all done in good faith, in the regular course of their business, and without any intention on the part of any one to defraud the Government.

The defendant in error made return of these dividends as part of his income, but the assessors claimed that he was in addition liable to pay an income tax on such a proportion of the entire amount so made by the corporations as his stock bore to the whole capital.

The defendant in error resisted this claim, paid it under duress and protesting in due form of law, and brought an action

to the April term, 1866, of the United States Circuit Court, for the District of Connecticut, to recover it back. In July, 1866, Congress passed an act, in consequence of which in June, 1867, Judge Nelson dismissed the suit for want of jurisdiction, this suit was brought in the State Court on the 20th day of August, 1867, and the plaintiff thereon obtained judgment, which was approved by the Court of Errors, of the State of Connecticut, and this writ of error was brought to this court by the then defendant.

Upon these facts two questions arise.

I. Were these amounts a part of the "income" of the defendant in error.

II. If they were not, did the act of Congress of July 13, 1866, incapacitate him from bringing this suit.

I.

Were these amounts "income" of the defendant in error.

This depends upon the construction to be given to Section 117 of the Internal Revenue Act of 1864, and especially of the following clause: "and the gains and profits of all companies whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person *entitled* to the same, whether divided or otherwise."

1st. Were these amounts "gains and profits" of these companies within the fair construction of the act.

The second and eighth sections of the finding (p. 7) must be taken together, and from them it appears that though these amounts were *earned* by the companies during the year, yet that they were, during the same year paid out again in the regular course of business, and were not profits in any usual sense of the term.

It is not found that their balance sheet in January, 1865, showed larger assets than that made in 1864. On the whole business of the year 1864, their *net* profits were only what was in fact divided. They did not extend their business or works in any way, and the companies after making their dividends were worth no more in January 1865, than in January 1864.

If a company begins the year fifty thousand dollars in debt for cotton on hand, and during the year works up and sells the cotton, from the proceeds pays its debts, and has ten thousand dollars left over, has it made sixty thousand dollars profits or ten?

It appears in the opinion of the Supreme Court of Errors of Connecticut, 35 Conn., p. 563 (574) that every corporation must file a certificate of their condition on January of each year, and in these certificates the debts paid and property bought would be set off against the earnings paid for them, and the balance would be the profits.

The object of these clauses of the internal revenue law was to tax dividends actually made, or money which *ought* to be divided, but was held back either as a surplus or as an undistributed fund.

This clearly appears from the 120th, 121st, and 122d sections, relating to the taxes to be paid by the companies themselves.

Section 120 says they shall pay five per cent on "all undistributed sum or sums made or added during the year to their

surplus or contingent funds;" and section 122 says on "all profits of such company carried to the account of any fund, or used for construction."

There can be no pretence that in any such companies the amount of earnings used in paying their debts or re-placing worn out machinery should be taxed.

The department has held in accordance with this view, "In determining the amount of taxable gains, such losses as have been ascertained and settled during the return should be deducted."

Bump, Int. Rev. Laws, p. 302, 5 I. R. R., 74.

2. So far we have considered only the general intent of the law, but section 117 says expressly that only the gains and profits to which a stockholder is "entitled" shall be returned.

In no possible sense of the word is a stockholder *entitled* as income to monies spent by the corporation during the year in paying its debts, and preparing for its future business.

This is a Connecticut corporation, and the question of the right of a stockholder to their property should be and is fixed by Connecticut law.

In Phelps *vs.* Farmers Bank, 26 Conn., p. 269, the Court hey on p. 272, "The profits of a bank, no matter when made, until separated from the stock by declaring a dividend, are mere increment and augmentation of the stock. They are properly stock themselves, composing a part of the stock of the bank, and will pass with the stock under that name either by contract, bequest or levy of execution."

See also Spencer *vs.* Higgins, 22 Conn., 521; Pratt *vs.* Pratt, 33 Conn., 446.

The rule is the same in other states.

In Minot *vs.* Paine, 99 Mass., p. 101, the Court say on p. 106, "The net earnings of a railroad corporation remain the property of the company as fully as its other property till the directors declare a dividend. A share-holder *has no title to them* prior to the dividend being declared." And on p. 111, "The money in the hands of the directors may be income to the corporation, but it is not so to a stockholder till a dividend is made; and where the company invest it in buildings and machinery, or in railroad tracks, depots, rolling stock, or any other permanent improvements for enlarging or carrying on their legitimate business, it never becomes income to the share-holder."

In Goodwin *vs.* Hardy, 57 Maine, page 143, the Court say, "The stockholders have no claim to a dividend until it is declared. Until that time it belongs to the corporation precisely as any other property it may own."

If these cases are good law, they are decisive.

Apart from decisions, this is the only fair, reasonable construction.

How, by any possible construction, can a stockholder be *entitled* to money which the corporation has used in paying off its debts?

The same principle applies to replacing worn out machinery, buying new, and purchasing raw material to carry on the business.

No stockholder can at the end of the year be entitled to any thing which the corporation has not got.

The Internal Revenue Department has gone no further than this.

A person *who would be* entitled to a share in profits if divided, should return the same as income whether divided or not.

Bump, Int. Rev. Laws, 288.

1 Int. R. R., p. 157. 7 Int. R. R., p. 50.

No one but this assessor has ever claimed that a sum was part of a stockholder's income which he had never received, never could receive, and never had any right to receive, and which the corporation itself had not got.

If only the part used to pay the debts was improperly assessed, it would invalidate the whole of this additional assessment, as it is an indistinguishable and inseparable part of the whole.

Moreover, for all that appears in the case, all these monies may have been so earned and expended before the first of May, 1864, in which case none of them would be taxable at all in any event.

II.

It is claimed, however, that even if this money was improperly taken from us we have no remedy, because the act of 1866 says no suit shall be maintained till after appeal to the Commissioner.

1st. This act was only prospective. It was not intended to affect the rights of parties already vested.

"Courts refuse to give statutes a retroactive construction, unless the intention is so clear and positive as by no possibility to admit of any other construction."

Sedgewick on Statutory Laws, p. 193.

Plumb *vs.* Sawyer, 21 Conn., p. 351.

McEwen *vs.* Den, 24 Howard, 242.

It would be grossly unjust to us to apply this rule. At the time this act was passed we had a suit pending in the United States Circuit Court. It was not reached for trial till June, 1867, more than six months after the act took effect. Judge Nelson then dismissed the case because the act took away his jurisdiction, and we were deprived of any redress.

A construction which would bring about such a result should be avoided.

2d. The act only refers to proceedings in courts of the United States.

Carpenter *vs.* Snelling, 97 Mass., 452.

Griffin *vs.* Ranney, 35 Conn., 249.

3d. It is a kind of Statute of Limitations for State Courts. Congress has no power to pass acts relating to actions in State Courts arising at common law.

It is only when causes of action arise under United States laws that Congress can prohibit or limit proceedings in State courts.

The objection assumes that one citizen of Connecticut has money belonging to another citizen, for which, by the laws of Connecticut, an action will lie.

Congress cannot affect this right of action. It can at most authorize a transfer of the suit to the United States Courts, but the defendant did not see fit to avail himself of this privilege.

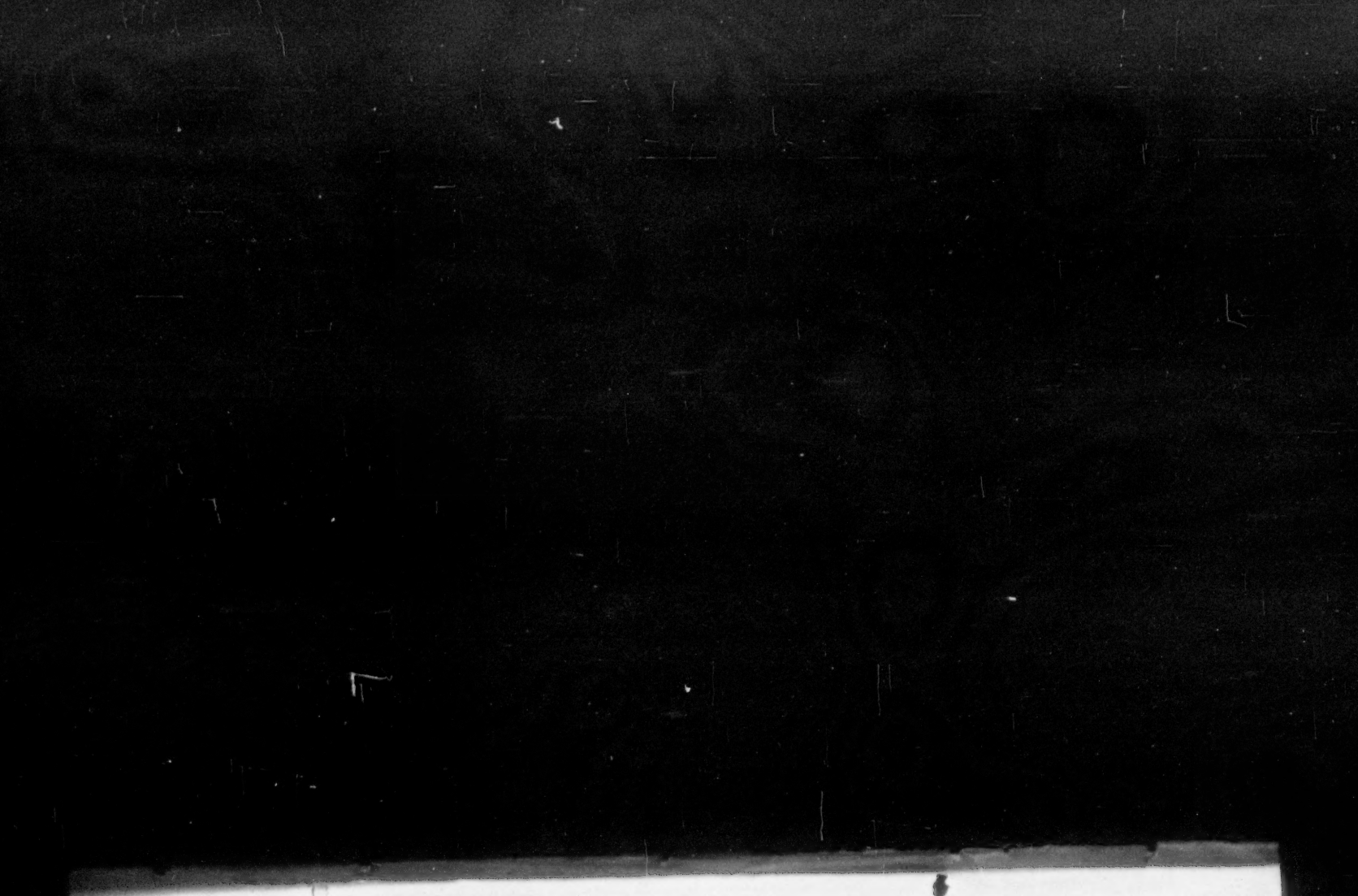
As soon as the money was illegally collected and paid under duress, a right to recover it *vested* in the plaintiff, with which Congress could not interfere.

At least a statute would not be construed retroactively so as to interfere with such right, unless the words used forbid any other construction.

4th. It does not appear in the case that any regulations have ever been made by the Secretary of the Treasury, providing for any appeal, or for any hearing or decision by the commissioner.

It was certainly not the intention of Congress to suspend our vested rights, until the Secretary should make these regulations, and if he should not make any within six or twelve months, then deprive us of all right to recover.

We say therefore, that the construction we claim is in accordance both with the general policy of the law, and the express terms of the section in question, and that the right to recover having vested in us by the laws of the State of Connecticut, we have not lost it, and that there is no error in the decision of the Supreme Court of Errors of the State of Connecticut.



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